



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 14, 2023

IN THE MATTER OF:

Appeal Board No. 629245

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective February 2, 2023, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by PARK LOGISTICS LLC prior to February 2, 2023 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a hearing at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 27, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and evidence should be taken before the case is decided.

To that end, the employer is directed to produce Bret Barber and Dante Phillips, who shall be questioned in detail about the conversation they had with the claimant on January 30, 2023, in which the claimant allegedly made racially inappropriate comments. The hearing should be scheduled after 11 a.m. to facilitate the appearance of Mr. Barber and Mr. Phillips.

The parties may produce any other relevant witnesses or documents. The Judge may take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that the hearing shall be scheduled after 11 a.m. to facilitate the appearance of Mr. Barber and Mr. Phillips, and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER